

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARLIS RUBENS AUGUSTUS
HOWARD,

Plaintiff,

v.

HEATHER SHIRLEY, JAMES
CRONJAGER, and SCOTT DEGOUGH,

Defendants.

Case No. 1:24-cv-00387-HBK (PC)

ORDER GRANTING PLAINTIFF'S MOTION
TO AMEND

(Doc. No. 28)

ORDER GRANTING PLAINTIFF'S MOTION
TO STAY AND DIRECTING CLERK TO
STAY THIS CASE

(Doc. No. 31)

Pending before the Court is Plaintiff's Motion to Amend his Complaint accompanied by a lodged amended complaint filed October 18, 2024. (Doc. Nos. 28, 29). Also pending before the Court is Plaintiff's Ex Parte Motion to Stay Pending Release from State Prison. (Doc. No. 31, "Ex Parte Motion"). Plaintiff requests a stay of the case for 90 days because he anticipates being released from CDCR custody in December and would like to retain counsel before proceeding further with this case. (*Id.* at 1-2). For reasons set forth below, the Court will grant both motions.

MOTION TO AMEND

Federal Rule of Civil Procedure 15 permits, *inter alia*, a party to file an amended complaint as a right before a defendant is served and responds. Fed. R. Civ. P. 15(a)(1)(A). Also, a pro se litigant is entitled to an opportunity to amend their complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). Because no

Defendant has yet responded to the Complaint as screened, the Court grants Plaintiff's motion and deems the lodged complaint (Doc. No. 29) the operative pleading. The Court will direct the Clerk to file the lodged complaint.


MOTION TO STAY

A federal court enjoys "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). Here, the Court finds good cause to grant Plaintiff's Ex Parte Motion to permit Plaintiff to seek the assistance of counsel. The Court will order a stay of the proceedings for 90 days. Defendants need not file any response to Plaintiff's Second Amended Complaint during the stay. If no counsel has made an appearance on Plaintiff's behalf after 90 days, the Court will lift the stay and screen Plaintiff's Second Amended Complaint.

Accordingly, it is **ORDERED**:

1. Plaintiff's Motion to Amend (Doc. No. 28) is **GRANTED**.
2. The Clerk of Court shall docket Plaintiff's lodged complaint (Doc. No. 29) and title it "Plaintiff's First Amended Complaint."¹
3. Plaintiff's Motion to Stay (Doc. No. 31) is **GRANTED**. **The Clerk shall STAY this case for all purposes for 90 days** from the date of this Order.
4. If no counsel appears on Plaintiff's behalf within 90 days of this Order, the Court will lift the stay and screen Plaintiff's operative First Amended Complaint.
5. Defendants are not required to respond to Plaintiff's operative First Amended Complaint until further order of the Court.

Dated: November 1, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

¹ Plaintiff titles the lodged complaint a "Second Amended Complaint," but it is the first amended complaint accepted by the Court.